Nos. 21310, 21313, 21314

In the

United States Court of Appeals

For the Ninth Circuit

CALIFORNIA GAS PRODUCERS ASSOCIATION, INDEPENDENT OIL AND GAS PRODUCERS OF CALIFORNIA, JADE OIL AND GAS COMPANY, THE STATE OF TEXAS, TEXAS INDEPENDENT PRODUCERS & ROYALTY OWNERS ASSOCIATION, WEST CENTRAL TEXAS OIL AND GAS ASSOCIATION and PERMIAN BASIN PETROLEUM ASSOCIATION,

Petitioners,

vs.

FEDERAL POWER COMMISSION,

Respondent.

Brief of Intervenor Pacific Gas Transmission Company

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January 30, 1967

SORG PRINTING COMPANY OF CALIFORNIA, 346 FIRST STREET, SAN FRANCISCO 94105

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To the United States Court of Appeals for the Ninth Circuit and the Honorable Judges Thereof:

PRELIMINARY STATEMENT

The orders of the Federal Power Commission (Commission) here on review granted authority requested by Pacific Gas Transmission Company (PGT) in applications to that Commission more fully described hereinbelow.

The Statement of the Case and Questions Involved will, we assume, be fully covered in the brief of the respond-

ent Commission. Therefore, this brief will be confined to a statements of facts and argument answering the briefs of petitioners and that of the amicus curiae.

STATEMENT OF FACTS

PGT owns and operates a 614-mile, 36-inch diameter pipeline extending from the International Boundary near Kingsgate, British Columbia, to the Oregon-California boundary. This section of pipeline is a portion of a 1400-mile pipeline project (the project) which transports natural gas from fields in the Province of Alberta, Canada to the San Francisco Bay Area served by Pacific Gas and Electric Company (PG&E). The project operates through the joint efforts of five participating companies. These participants and their respective functions are summarized below:

(1) *Alberta and Southern Gas Co. Ltd.* (Alberta and Southern), a wholly owned Alberta subsidiary of PG&E, purchases natural gas from producers in Alberta, arranges for its transportation in Alberta and through British Columbia to the International Boundary, and sells it there to PGT (R. 234-235).

(2) *The Alberta Gas Trunk Line Company Limited* (Trunk Line) transports within the Province of Alberta the gas purchased at processing plants by Alberta and Southern. It was incorporated by a special act of the legislature of Alberta for the purpose of performing this same function for all projects exporting gas from Alberta. It is not affiliated with any of the other companies participating in the project. (R. 235)

(3) *Alberta Natural Gas Company* (Alberta Natural), a company incorporated and authorized by special act of the Parliament of Canada to transport gas in interprovincial and foreign commerce, transports gas for Alberta and Southern and for Westcoast Transmission Company Limited (Westcoast)

from Alberta through British Columbia to the International Boundary near Kingsgate, British Columbia. Two-thirds of its common stock is owned by PGT and the remaining one-third by the public (R. 236).

(4) *Pacific Gas Transmission Company* (PGT), a California corporation, transports gas, pursuant to a certificate of public convenience and necessity issued by the Commission on August 5, 1960, from the International Boundary through Idaho, Washington and Oregon to the California border. In addition, it transports as a contract carrier gas purchased from Westcoast by El Paso Natural Gas Company (El Paso). Fifty and eight-tenths percent (50.8%) of its common stock is owned by PG&E (R. 236-237).

(5) *Pacific Gas and Electric Company* (PG&E), a California corporation, purchases gas from PGT at the Oregon-California border and transports it through its own pipeline facilities for a distance of 296 miles to Antioch, California, where the gas enters its integrated transmission and distribution system serving northern California (R. 237).

The PGT portion of the project was authorized by the Commission in 1960 (Pacific Gas Transmission Co., 24 FPC 134).[1] Having in mind the size of the potential reserves in Western Canada[2] and the rapidly increasing demand for gas in northern California, the 36-inch pipe-line, which was oversized for the initial certificated volume, was considered

1. The Canadian portion of the project was constructed pursuant to authorizations obtained from Canadian provincial and federal governments following extensive hearings before the Alberta Oil and Gas Conservation Board and the National Energy Board.

2. Canada's Royal Commission on Energy has found it "not unreasonable to expect an ultimate recovery of 300 trillion cubic feet of natural gas" from the "Western Canada sedimentary basin." Pacific Gas Transmission Co., Docket No. G-17350, *et al.,* 24 FPC 134, 144.

appropriate because its through-put capacity could be increased substantially by simply adding compressors at a reasonable cost. The project was supported by all of the representatives of the consumers upon whom it would have any effect including, among others, the State of California, the California Public Utilities Commission (California Commission), and the City and County of San Francisco (San Francisco).

On January 12, 1965, PGT applied to the Commission for authority to take advantage of the availability at minimal cost of additional transmission capacity to bring gas to PG&E at a low incremental cost. It proposed to increase its authorized deliveries to PG&E of 415 M²cf (415,000,000 cubic feet) per day by 200 M²cf per day in two steps: the first 100 M²cf on November 1, 1966 and the second on November 1, 1967. The proposal was simply to add compressors at a cost of $13,857,000. By this expenditure of about 10 percent of the original cost[3] of the pipeline its capacity could be increased by 50 percent. As a result, the cost to PG&E of this additional increment of gas was estimated to be 22.60, 23.36 and 23.60 cents per 1000 cubic feet (Mcf) in the years 1968, 1969 and 1970, respectively. (R. 1306)

In addition the transport cost for the gas destined for delivery to El Paso at points on the PGT system where El Paso takes delivery will decrease by the proposed expansion as the following comparison shows: (R. 1341)

	With Proposed Expansion	Without Proposed Expansion
1967	5.80¢	6.91¢
1968	5.76	7.10
1969	5.80	7.05
1970	5.85	6.95

3. The cost of PGT's portion of the original project was $116,940,000 (R. 4903, 4908 and 5257).

The total savings in transportation cost to El Paso and its customers in the states of the Pacific Northwest between 1966 and 1970 will amount to $2,500,000 (R. 1342).

PGT's 1965 applications received the unanimous support of the consumers represented in the proceeding before the Commission. The State of California, through the California Commission (which regulates PG&E) and the States of Idaho, Oregon and Washington all expressed their support of the applications, as did San Francisco. The staff of the Commission, subject to certain conditions, recommended that the certificates applied for be granted. The Pacific Lighting Companies[4] expressed their support. El Paso which, as hereinafter discussed, supplies a major portion of PG&E's gas needs by deliveries at the Arizona-California border, said that it had no unfilled capacity by which it could make comparable deliveries to PG&E and that it did not have a competing project (R. 49). It made no objection to the granting of the certificates requested.

Nevertheless, in the face of this rather impressive support, certain producer representatives and the producing State of Texas, the petitioners herein, expressed their opposition.

On February 17, 1966, the Presiding Examiner issued his Initial Decision in which he granted the authorization requested by PGT. Following the receipt of briefs on exceptions and in opposition to exceptions, the Commission, on June 15, 1966, issued its opinion and order issuing certificate for the construction by PGT of the necessary compressor facilities and authorizing the importation of the additional 200 M^{2}cf of natural gas.

PGT has proceeded to install the authorized compressors

4. The Pacific Lighting Companies are Southern California Gas Company, Southern Counties Gas Company of California and Pacific Lighting Service and Supply Company.

and they are now in operation delivering the additional volumes of gas to PG&E at the Oregon-California border.

Certain additional facts by way of background are essential to a full appreciation of the Commission's actions in this case:

For many years El Paso has been delivering and selling approximately 1,025 M²cf of gas per day to PG&E at the Arizona-California border near the Town of Topock pursuant to certificates issued by the Commission. PG&E transports the gas purchased from El Paso in its own 502-mile, 34-inch diameter pipeline from Topock to Milpitas, California, at the south end of the San Francisco Bay, near the PG&E load center.

El Paso also delivers and sells gas to the Pacific Lighting Companies at the Arizona-California border at two points: one near Topock and the other farther south near Blythe, California. The certificates issued by the Commission authorizing El Paso to make these sales to the Pacific Lighting Companies provided for 1,130 M²cf per day in 1965 when PGT's instant applications were filed to increase its deliveries to PG&E.

However, more than one year earlier, on October 11, 1963, El Paso had filed an application with the Commission for authority to increase its deliveries to the Pacific Lighting Companies by 250 M²cf per day. On November 17, 1963, it filed an amendment to said application offering as a separate proposal to deliver up to 575 M²cf per day. At that time Transwestern Pipeline Company (Transwestern) had pending applications before the Commission for authority to increase its deliveries to the Pacific Lighting Companies by 340 M²cf per day. On October 21, 1963, a little over a year before PGT's instant applications were filed, the Commission consolidated for hearing the applications of El Paso and Transwestern with that of the Gulf-Pacific Pipeline

Company (Gulf-Pacific). The latter company, a subsidiary of Tennessee Gas Transmission Company, had earlier filed an application with the Commission for authority to transport after five years 570.8 M^2cf per day from Humble Oil Company's reserves in Texas to the Southern California Edison Company (Edison) and 294.25 M^2cf per day from the same source to the Los Angeles Department of Water and Power. This gas was to be used by the two purchasers as fuel for their steam electric generating plants. Edison and the Department of Water and Power were then (and are now) the largest customers of the Pacific Lighting Companies. Hearings were conducted on these consolidated applications from June 1, 1964 for 169 days, and the matter was finally submitted to the hearing examiner for decision on March 17, 1965. The transcript consisted of 28,022 pages and 897 exhibits.[5] These proceedings will be referred to in this brief as the "*Gulf-Pacific* case."

In its application to the Commission and in its evidence introduced in the *Gulf-Pacific* case, El Paso set forth a specific price proposal for deliveries of the additional volumes of gas to California. El Paso told the Commission that if its application to increase deliveries to the Pacific Lighting Companies by 250 M^2cf per day was authorized, it would reduce its rates to all of its California customers by ¾ cent per Mcf, providing that its gas purchase costs did not increase substantially in the meantime. El Paso also said in its application that it would reduce its rates by another ¼ cent per Mcf if its proposed 325 M^2cf additional expansion in deliveries to the Pacific Lighting Companies was authorized. The price (the filed rate tariff) for El Paso's deliveries to the Pacific Lighting Companies and to PG&E at the California-Arizona border was and for many years had

5. Transwestern Pipeline Co., *et al,* .... FPC ...., Mimeo. Op. 500, p. 7, Docket No. CP63-204, *et al.,* July 26, 1966.

been the same. The price was then and is now 30.08 cents per Mcf at 14.9 psia for deliveries at an annual load factor of 100%.

Furthermore, it appeared at the time of the hearings below that El Paso's rate for deliveries to California could be reduced by another 1 cent per Mcf if the reductions of producer rates ordered by the Commission in the *Permian Basin Area Rate* case were sustained on appeal, *and if* El Paso was required by the Commission to pass on to its customers the resulting reduction in its gas purchase costs. As a consequence of these three possible reductions totalling 2 cents per Mcf, it appeared as though El Paso's rate for gas sold to PG&E and the Pacific Lighting Companies might be reduced to about 28.08 cents per Mcf at 14.9 psia, which, converted to 14.73 psia, would be 27.75 cents per Mcf.[6] However, the Commission's *Permian Basin* decision was remanded to the Commission on January 20, 1967 in *Skelly Oil Co., et al. v. Federal Power Comm'n,* ...... F.2d ...... (10th Cir. 1967).

Thus the Commission, through El Paso's application, its official files, and through evidence taken under one of its hearing examiners, was explicitly informed as to the price

6. In PGT's Brief to the Commission opposing Exceptions this 27.75 cents per Mcf figure was used for comparative purposes (R. 5220).

It could be argued that if PG&E would activate a ¼ cent per Mcf reduction in the price it pays for El Paso deliveries to it, by reason of purchasing an additional 200 M²cf from El Paso, that the incremental cost of that additional volume would be somewhat lower than the 27.75 cents per Mcf estimate. On that basis, the incremental cost would still be considerably in excess of the incremental cost to PG&E of the additional 200 M²cf per day from PGT. Of course El Paso, in the *Gulf-Pacific* case, indicated that such a ¼ cent per Mcf reduction would not occur for a 200 M²cf per day portion of its illustrative 325 M²cf per day expansion to the Pacific Lighting Companies. Therefore, the 27.75 cent per Mcf estimated cost to PG&E for an additional 200 M²cf per day from El Paso is the most reasonable estimate for purposes of comparison with the PGT cost to PG&E.

at which El Paso would sell additional volumes of gas to California.

On July 26, 1966, the Commission issued an order denying the application of Gulf-Pacific and granting the applications of Transwestern and El Paso to increase their deliveries to the Pacific Lighting Companies by 340 M^2cf and 250 M^2cf per day, respectively. On December 9, 1966, the Commission reaffirmed its action in its opinion and order on rehearing (FPC Opinions Nos. 500 and 500-A (Mimeo), ... FPC ......).

ARGUMENT

I. The Commission's Conclusion That the Project Expansion Is Supported by an Adequate Gas Supply Is Based Upon Substantial Evidence and the Commission Properly Concluded That Canada Is a Reliable Source of Gas Supply.

The State of Texas (Texas) and Texas Independent Producers & Royalty Owners Association, West Central Texas Oil and Gas Association, and Permian Basin Petroleum Association (TIPRO, *et al.*) argue[7] that:

(a) The project gas supply is inadequate to support the proposed increase in deliveries to PG&E;

(b) The Canadian sources are undependable;

(c) The original application, which resulted in the certificate issued by the Commission in 24 FPC 134 for the construction and operation of PGT's pipeline from Canada to California, was uncontested.

A. The Evidence Supporting the Commission's Finding That the Gas Reserves Are Adequate.

The Oil and Gas Conservation Board of Alberta, with the approval of the government of Alberta, granted a permit to

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7. The Texas and TIPRO, *et al.* arguments concerning an alleged alternative source of supply to PG&E are covered in other portions of this brief.

export the increased volumes from Alberta (Ex. 8, R. 2319-2326) and the National Energy Board of Canada, with the approval of the Canadian government, issued a license to export the increased volumes from Canada (Ex. 20, R. 2417-2426). These authorizations to export were based on the determinations of the Alberta and national boards that the export volumes were supported by known reserves of gas.

In addition to these determinations by the Alberta and Canadian regulatory authorities that an adequate gas supply exists to support the proposed expansion, a study of the gas reserves dedicated to Alberta and Southern and the deliverability of these reserves was submitted in the proceedings by a witness for PGT. The total recoverable gas reserves of pipeline gas available to Alberta and Southern as of November 1, 1964, were estimated by this witness (Ex. 1, p. 1, R. 1786) to be 5,509,340 M^2cf.[8]

These proved reserves were estimated to be sufficient to meet PGT's estimated delivery requirement for 17 years from November 1, 1964, and to have a life index of 23.1 years (Ex. 1, p. 5, R. 1790). The proved contracted reserves alone, which have a life index of 19.2 years, would be sufficient to meet the estimated delivery requirements for 13 years from November 1, 1964 (Ex. 1, p. 4, R. 1789).[9]

8. These reserves were classified as follows:

Under contract	4,574,411	M^2cf
Under option	553,513	
subtotal	5,127,924	
Other available	381,416	
Total	5,509,340	

"Under contract" and "under option" are self-explanatory. "Other available" are reserves in several fields not covered by contract or option but available for contract as no competing pipeline is purchasing gas from the field.

9. Texas makes the strange argument that the gas supply is somehow defective because additional wells will have to be drilled

B. The Commission Properly Concluded on the Evidence Herein That the Gas Purchase Contracts Subject to the Canadian Regulatory Authorities Are a Reliable Source of Supply.

About 98 percent of the gas supply for the original project authorized by the Commission in 1960 was purchased under Form A and B contracts. These contracts contained the price renegotiation clause about which Texas and TIPRO, *et al.* now complain (Texas brief, p. 14; TIPRO, *et al.* brief, p. 9). In its opinion at that time, 24 FPC 134, the Commission, at page 137, said:

> "Beyond these limiting factors, there remains the primary responsibility of the Canadian authorities to regulate producer and pipeline rates in such a way as to insure that the mutual benefits of the project as a whole will continue. A careful review of the Canadian legislation, including the National Energy Board Act, the Alberta Pipe Line Act, and the Alberta Gas Utilities Act, and the determinations made thereunder with regard to this project, demonstrates that the Canadian regulatory authorities now have a comprehensive rate and certificate jurisdiction at least equal to our own, and broad enough, in letter and spirit, to give effect to the principles of international comity and mutual responsibility on which the continuing success of this project ultimately depends. This legislation embodies the same 'just and reasonable' standards as are found in the Natural Gas Act and guarantees that the American and Canadian consumer will be treated alike."

The Canadian laws there referred to by the Commission have not changed. Indeed, the petitioners do not even claim

in the future to maintain deliverability. This is always the case, because as gas is produced the pressure in the reservoir drops and additional wells must be drilled to maintain the volume of delivery. This was a known fact within the expertise of the Commission, as it is a fact present in the gas supply supporting every certificate issued by the Commission.

that they have. There was no evidence introduced below which in any way questioned the above quoted conclusions of the Commission. Quite the contrary was true: the evidence demonstrated that the original project will be improved in all respects by the expansion. The gas reserves and the gas purchase contracts are improved and the costs are reduced, all of which are of benefit to the United States consumers.

In its 1960 opinion, the Commission also addressed itself to the question of the Canadian producer contract prices. The Commission there said (at 24 FPC 134, at page 137):

> "The most important of these costs is the cost of purchased gas reflecting Canadian producer prices. In this connection it is worth noting that Alberta and Southern has entered into option agreements with several major producers covering areas containing both established and prospective reserves of great size. These agreements commit the producers to sell large additional volumes of gas at the same prices as those in the present contracts, when and as needed for the contemplated future expansion of this project. These reserve acreage contracts should have an important stabilizing effect on field prices in the foreseeable future."

Reserve appreciation under the original Form A contract referred to by the Commission in the above quotation accounts for 46 percent of the reserves supporting the proposed expansion (R. 461). The remaining 54 percent of the reserves supporting the proposed expansion are covered by the new Form D contract (R. 461). Some of this 54 percent consists of reserves located in the same fields as those which are covered by the original contracts. Of the reserves in these fields, some are owned by producers with whom Alberta and Southern has existing contracts, and

some are owned by others (R. 325). Nevertheless, all these producers agreed to the new Form D contract for the sale of gas from reserves not covered by the original contracts (R. 359).

The remaining portion of the 54 percent of reserves supporting the expansion is located in fields from which Alberta and Southern does not now purchase gas and these reserves are also committed under Form D contracts. The Form D contract has the same price schedule as the contracts supporting the original certification. However, it has important improvements from the buyer's standpoint (R. 325-326). One such improvement is that the set schedule of prices established for the entire life of the contract is not subject to change (R. 326). The sellers, under Form D contracts, are not entitled to have the prices reopened.[10]

The witness sponsoring the gas supply contracts was Mr. S. Robert Blair, who negotiates with the Alberta producers on behalf of Alberta and Southern. He testified that in his opinion, on the basis of the present prices being paid for gas in Canada and the new Form D contracts establishing a set schedule of prices, there was virtually no possibility that the prices paid by Alberta and Southern would be changed by renegotiation in 1968 (R. 367). This points up one of the most important aspects of the proposed expansion. The new Form D contracts which support the expansion have a very beneficial effect upon the gas prices in the old contracts supporting the gas supply of the original project. These new contracts, with their set schedule of prices, establish a virtual lid on the prices in the old contracts supporting the project authorized in 1960.

---

10. Except for the four contracts for a minimal volume of gas in the Wilson Creek field.

In view of the demonstrated ability of Alberta and Southern to improve the price provisions in its gas supply contracts together with the practical desire of Alberta producers to continue supplying the California market and the comprehensive producer regulatory powers provided by the Alberta Gas Utilities Act, the Commission was well within its discretionary powers in concluding that the gas supply for the proposed expansion was reliable.

C. The Consistent Support of the Representatives of the Consumers Benefited by the Original Project and the Instant Expansion Program Does Not Raise the Presumption That the Project Is Contrary to the Public Interest as Implied by Texas and TIPRO, et al.

Texas and TIPRO, *et al.* make the unique contention that the application resulting in the existing certificated project was uncontested and therefore in some way the public interest has not been protected. It was not contested because it was supported by the representatives of the consuming public, just as the representatives of the consuming public unanimously supported the instant expansion before the Commission. There were many more intervenors in the original certificate proceedings before the Commission (24 FPC 134) than there were in this proceeding. The project as a whole was completely reviewed in 16 days of hearing, and one only need read the 56 page Presiding Examiner's Initial Decision therein to see that all aspects of the project were thoroughly analyzed and discussed before the certificate was issued by the Commission. The unanimous support of consumer interests resulting in a prior uncontested proceeding, in our opinion, demonstrates that the Commission's authorization of the original project was in the public interest and does not, as Texas and TIPRO, *et al.,* imply, demonstrate the exact opposite.

II. The Commission Properly Refused to Accept the Misleading Arguments of Texas, TIPRO, et al., and the California Gas Producers Association et al. (CGPA) as to the Price at Which El Paso Gas Was Available to PG&E.

El Paso's rate to PG&E for firm gas is presently composed of a two part rate: (a) a monthly demand rate of \$2.312 per Mcf of the contract volume that El Paso is obligated to deliver on each and every day at PG&E's request, and (b) a commodity rate of 22.48 cents per Mcf which is paid for each Mcf taken by PG&E. (R. 3091-3094) The El Paso tariff is based on 14.9 pressure base and the resulting rate, giving effect to the demand and commodity components and a load factor of 100%, is 30.8 cents per Mcf or 29.74 cents per Mcf at 14.73 psia, the pressure base at which all the PGT rate and cost estimates in these proceedings are computed.

Petitioners have incorrectly used the commodity portion of the full El Paso rate as a comparison with the cost to PG&E of the additional gas from PGT. They do so by quoting, and referring[11] to a portion of the cross-examination (R. 1221) of Mr. Frank by counsel for El Paso:

> "Q. At page 6 of your exhibit No. 18 for identification, Columns 12 and 13, contain some load factor figures, does it not, sir?
>
> A. Yes, sir.
>
> Q. Is the company policy to take Canadian gas at 100 percent load factor?
>
> A. I made this computation and I assumed that we would on the basis that the incremental cost would be less than the incremental cost of El Paso gas.
>
> Q. What figures did you use for that?
>
> A. I used 22 cents per Mcf and approximately 18 cents per Mcf Canadian, 22 cents for El Paso.
>
> Q. Are those border prices or what prices are they?

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11. TIPRO, et al, brief, p. 11.

A. 22 cents is approximately the border price at the California border.

Q. At Topock?

A. At Topock, right; and the 19 cents was approximately the purchase price of the gas at the field.

Q. And the 18 cent price contains no transportation cost from the field?

A. No, sir.

Q. What is the distance from the Alberta fields to the load center at Antiock (sic), sir, approximately?

A. Over a thousand miles."

Following a quotation of a portion of the above, TIPRO, *et al.* argue:

> "The above sworn testimony, given by Applicant's own witnesses under cross-examination, tends to confirm the fact that the El Paso (Texas) gas is cheaper than gas proposed to be imported under this application." (TIPRO, *et al.* brief, p. 12)

Texas cites the same testimony as the basis for the following italicized portion of its brief:

> *"The testimony of PGT's own witness herein reflects that the incremental price of such available 'Texas' gas at the California border (Topock) is approximately 22 cents per Mcf, which is a cheaper price than even the original incremental price of PGT's proposed imported gas at the California border* (R. 1219-1222)." (Texas brief, p. 21)

They made the same argument to the Examiner and the Commission. Fortunately the Examiner and the Commission were quite familiar with the term "incremental cost" and knew that Mr. Frank in the quoted cross-examination was using the term in a different context than used elsewhere in the proceedings. As a consequence neither the

Examiner nor the Commission was misled into accepting the Texas, TIPRO, *et al.,* argument.

As the Commission knew, the average cost to a purchaser of existing certificated deliveries is composed of the fixed costs (nonvariable) and the costs which vary with the volumes delivered. The fixed costs are comprised primarily of depreciation, return, taxes, overhead, and other similar items. The cost of gas component (and compressor fuel costs) will vary depending upon volumes delivered. Thus, under PGT's cost of service tariff, the cost to the purchaser of volumes taken in excess of its minimum obligation (for which it must pay all of the fixed costs) is composed practically entirely of the cost of gas and compressor fuel cost. The fuel cost is so minimal on a unit basis that it can be ignored for all practical purposes. This cost of gas taken in excess of the minimum obligation is often referred to as an incremental cost. In the above quoted portion of the cross-examination of Mr. Frank, he compared the incremental cost to PG&E of gas purchased from PGT and El Paso for the purpose of determining which source would be taken at the higher load factor. The incremental cost to a purchaser, as mentioned above, is the unit cost at which volumes can be purchased from a certificated supply in excess of minimum purchase obligation. Thus, under El Paso's present rate structure, which is composed of demand and commodity components, the incremental unit cost to PG&E of volumes in excess of the minimum obligation is approximately 22 cents per Mcf at 14.73 psia, as the demand component must be paid by PG&E regardless of the volume taken. The cost to PG&E of gas purchased from PGT at the minimum obligation volume includes all of the fixed costs of transportation to PG&E from Alberta. Accordingly, the incremental unit cost to PG&E of volumes in excess of the minimum

obligation is essentially the gas purchase cost. Mr. Frank therefore used as an incremental unit cost of volumes purchased by PG&E from PGT in excess of the minimum obligation volume the amount of 18 cents. This, in the context of his testimony, is obviously comparable to the El Paso commodity price of 22 cents.

The incremental cost to PG&E of volumes taken between the minimum obligation to purchase and the maximum obligation to deliver under the El Paso and PGT tariffs should not be confused with the incremental cost of additional volumes from PGT or El Paso which require expansion of their systems.

As mentioned above, the incremental cost to PG&E of the additional volumes from PGT is 22.60 cents, 23.36 cents and 23.60 cents per Mcf in the years 1968, 1969 and 1970, respectively (R. 1306). The cost to PG&E of additional volumes from El Paso is El Paso's "G" rate which as shown above is now 29.74 cents per Mcf but could possibly be reduced to about 27.75 cents per Mcf.

Petitioners also make a further rather confusing and misleading argument. They persistently confuse the firm, long-term supply (at least 20 years) which the Commission authorized PGT to provide to PG&E, with the possibility of temporary "best efforts" gas. Such best efforts gas is available from a pipeline seller on such days as its facilities serving other customers are not in full use and hence can be used to deliver gas over and above the seller's firm obligation to deliver.

Such best efforts gas is available to PG&E from El Paso under certain conditions and at certain times. As such gas may be available from the use of facilities idle because other customers with a priority to receive gas from the capacity are not demanding the gas at the particular time,

the price for such best efforts gas is less than that for firm gas. On occasion the Commission has authorized El Paso to deliver such best efforts gas at the commodity rate on such days as the El Paso facilities are not needed to serve the contract demands of its other customers. This is a non-dependable supply available to PG&E and is not comparable to the PGT firm, long-term supply. Here, again, the expertise of the Examiner and the Commission protected them from being misled by the petitioners' arguments.

III. Substantial Evidence Supports the Commission's Conclusion That the Record Does Not Demonstrate That Alternative Methods Exist for Providing the Needed Volumes of Additional Gas to PG&E at Rates and Under Conditions More Advantageous Than Those Which Would Be Achieved by Certification of PGT's Application.

Mr. J. S. Moulton, who for over 20 years was the PG&E officer responsible for acquiring gas to meet its growing demands, testified (R. 1622-1623) that he knew of no alternative source of additional out of state gas available to PG&E at a cost to it as low as the incremental cost of the additional 200 M^2cf per day that PGT sought authority to deliver.

El Paso was an intervenor in the proceedings before the Commission. It had no alternative plan to serve PG&E. El Paso's counsel stated that it had no unfilled capacity by which it could make deliveries to PG&E (R. 49, 425).

Texas did not seek to introduce evidence of an alternative plan of delivering gas from Texas to PG&E in California. Instead, it sought to introduce into this case the pipeline design evidence introduced by El Paso in the *Gulf-Pacific* case of a design for pipelines and other facilities[12]

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12. Consisting of 499.8 miles of large diameter pipe, 21.9 miles of smaller diameter pipe, compressors, a large gasoline plant, a

estimated to cost $77,081,000 to deliver 325 M²cf per day to the Pacific Lighting Companies (Ex. 56, R. 2920-2933). As this was simply an attempt to introduce a fragment of El Paso's evidence in a then pending application to serve the Pacific Lighting Companies, it did not establish a complete alternative project to serve PG&E, and the Examiner properly excluded the evidence but permitted it to be introduced into the record as an offer of proof. It was thereby made available for the Commission's consideration. Of course, it was available in the official records of the Commission all along, as was El Paso's evidence in the *Gulf-Pacific* case and its application to the Commission therein concerning the rate it would place into effect for gas delivered through new facilities to the Pacific Lighting Companies at the California border.

The Commission found, that there were ". . . ample supplies of gas available in Permian Basin and other areas in the southwest . . ." (R. 5260), but that the facilities for bringing this gas to California in the amounts desired by consumers were not available nor could they be for some time. No other finding could have been made in view of the evidence before the Commission in this case and the then pending *Gulf-Pacific* proceedings.

Furthermore, the Commission found that there was no demonstration that alternative methods exist for providing the needed volumes of additional gas *at rates and under conditions* more advantageous than proposed by PGT (R. 5259).

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large purification plant and appurtenant equipment. (Ex. 56, R. 2927-2929)

The estimated cost of PGT facilities consisting entirely of compressors to increase the through-put of the pipeline from Canada to the California border, was $13,857,000 and the total cost for the expansion of the project including the cost of additional compressors in Canada to transport the gas from the fields in Alberta to the California border was estimated at $24,974,000. (R. 1328-1329)

The alternative source of supply upon which Texas relied was El Paso, and the El Paso price range was a known fact. The Commission gave full effect to the offer of proof and the El Paso proposal known to it from the *Gulf-Pacific* case application and hearings, and came to the only conclusion that could be reached on the facts.

Subsequently the Commission granted El Paso's application to deliver additional gas to the Pacific Lighting Companies.

The Texas argument seems to be that as a matter of law the Commission was required to ignore the fact that El Paso was engaged in a competitive proceeding to deliver gas to the Pacific Lighting Companies and hence was not in a position to offer additional gas to PG&E. Likewise, Texas would have the Commission ignore the fact known to it through its official files that El Paso's rate for additional deliveries to the Pacific Lighting Companies would not be less than from 27.75 cents per Mcf, over 4 cents per Mcf higher than the cost to PG&E of the additional volumes from PGT.

Texas, TIPRO, *et al.,* and CGPA argue that *City of Pittsburgh v. Federal Power Comm'n,* 237 F.2d 741 (D.C. Cir. 1956) and *Scenic Hudson Preservation Conference, et al. v. Federal Power Comm'n,* 354 F.2d 608 (2d Cir. 1965) establish the proposition that the Commission committed error in not ordering the Examiner to admit the evidence which was the subject of the offers of proof.

These cases do not apply to the circumstances of this case. Here as discussed above the Commission considered the alternatives referred to by petitioners.[13] Furthermore, the

13. In its order of December 17, 1965, the Commission pointed out that the offers of proof "will be available for our consideration when the case comes before us for decision. We are of the opinion that this is the proper way to handle the matter". (R. 4890-4893)

cited cases stand for the common sense principle that when there is an apparent possibility of injury to the public interest arising from the granting of the applications applied for, reasonable alternative proposals should be considered. This principle was well summed up in the case cited by the Second Circuit in support of its *Scenic Hudson* decision, *Michigan Consolidated Gas Co. v. Federal Power Comm'n*, 283 F.2d 204 (D.C. Cir. 1960), *cert. denied* 364 U.S. 913 (1960) where the Court said (at page 226):

> "These matters, *on their face, reflected the basis for an alternative to total abandonment, so apparently in the public interest, that their consideration at some point in the proceedings was indispensible* to the validity of any public interest determination in support of total abandonment." (Emphasis supplied)

In the *City of Pittsburgh* case the applicant sought to abandon the use of a pipeline for the transmission of natural gas and convert it to the transportation of oil. The applicant proposed to use the capacity in another pipeline owned by it to transmit the volume of gas then being carried in the line it sought to convert to the transportation of oil. The City of Pittsburgh claimed that this would increase costs to consumers because the transfer of the gas from the line to be converted to the other pipeline would *use up* the capacity in that line which could be expanded at little expense and when consumers later required additional gas the necessary pipeline expansion would be more expensive.

The Commission refused to consider the problem of future expansion. The Commission said that it had no jurisdiction to consider any alternatives to the specific proposal made by the applicant. In discussing the issue the court said:

> "That Texas Eastern would soon move to expand its gas deliveries was apparent throughout the proceeding. . . . . *During the pendency of this appeal, Texas East-*

ern's plans became concrete and, on December 19, 1955, it filed an application with the Commission for authority to expand its capacity . . . at a cost of about $60 million." (Emphasis added) 237 F.2d 741, 751-752.

Therefore, the court held that in the circumstances of the case "The exclusion of evidence relating to future expansion and *the refusal to consider future expansion in determining the public convenience and necessity* were erroneous." (Emphasis added) (237 F.2d at 753)

The *City of Pittsburgh* case stands for the proposition that the Commission must not consider each application out of context with the known factors concerning the public interest in the situation before it. And that is the very principle followed by the Commission in this case.

El Paso was a party to the proceedings below. It did not have a proposed project in competition with that proposed by PGT. It did, however, have an application pending for a project, on which hearings had been concluded, to serve another customer at a specified price. Texas sought to have introduced a fragment of the evidence from that other case relating to additional pipelines and appurtenant facilities costing approximately $77,000,000) and ignoring completely the evidence that the rate for deliveries to California in that case was proposed to be no lower than 27.75 cents per Mcf. Texas also sought to subpoena the same evidence.[14] This offered evidence added nothing to the proceed-

14. The proposed subpoena directed to Mr. Hunsaker reads in pertinent part as follows: ". . . to testify concerning the availability of natural gas to northern California through facilities of El Paso Natural Gas Company," and bring, "all documents, work papers, memoranda and other written instruments relating to the above matters."

The subpoena of this pipeline design expert was not directed to the *price* at which gas through El Paso facilities would be sold to PG&E. Texas knew from his testimony in the Gulf-Pacific case that Mr. Hunsaker was unable to testify as to the prices (rates) El Paso would charge for additional deliveries of gas to California.

ing, as no one would dispute that pipeline additions could be constructed by El Paso to bring additional gas to California. The point is that the evidence offered by Texas did not show an alternative project, *i.e.* it left out the important factor of *price*.

However, the Commission was aware from the El Paso application and evidence in the *Gulf Pacific* case of the price at which El Paso would deliver additional volumes of gas to California. Under the broad principle laid down by the *City of Pittsburgh* case it could not ignore that fact of which it was aware. Furthermore, where in the *City of Pittsburgh* case subsequent events showed that the possibility of expansion had blossomed into a concrete proposal and therefore the alleged adverse effect on consumers was imminent (as the court noted in its opinion), here in this case subsequent events have conclusively demonstrated the correctness of the Commission's conclusion that there was no alternative project as advantageous to the public interest as that proposed by PGT and authorized by the Commission.

In *Scenic Hudson Preservation Conference, et al. v. Federal Power Comm'n, supra,* 354 F.2d 608 (2d Cir. 1965), the court held that because of the danger to an important part of our national heritage, the scenic Hudson River, the Commission had the obligation to consider alternative methods of obtaining necessary electric energy for New York. Here, again, the case was based upon the same common sense broad principle that the Commission should not ignore important factors of the public interest of which it was aware. The important factor in that case was the beauty of the Hudson River and the effect on it of a large hydroelectric development. Given that fact the court held that the Commission had the duty to give the public "active and affirmative protection."

In *Michigan Consolidated Gas Co. v. Federal Power Comm'n*, 246 F.2d 904 (3d Cir. 1957), *cert. denied* 355 US 894 (1957) no such overriding factor of public interest was involved and the Court held that the Commission properly rejected an alternative proposal which was deficient in material aspects. The court went on to hold that the burden of proving the feasibility of an alternative project was on the opposing party offering it and not upon the Commission.

There was no given fact of possible injury to the public in this proceeding before the Commission, quite the contary was true. In this case we have a project receiving the unanimous support of the representatives of the public interest. They knew that the addition of compressors at a cost equal to 10 percent of the existing pipeline would add 50 percent to its capacity, and would reduce the cost of gas delivered to consumers in California, Oregon, Washington and Idaho. These were the given facts concerning the public interest in this case.

Texas and TIPRO, *et al.* were attempting before the Commission to frustrate a project having the unanimous support of the affected consuming public by offering an incomplete alternative project based on fragments of evidence from another case then pending before the Commission. This incomplete alternative proposal was based on adding over 499 miles of pipeline and other facilities to the El Paso system at a cost of over $77,000,000 even though El Paso, repeatedly stated on the record that it had no proposal to serve PG&E.

In the circumstances of this case the Commission, considering the evidence, the offers of proof, and the El Paso proposals known to it from the *Gulf Pacific* case, properly found that there was no demonstrated alternative method for providing the additional volumes of gas needed to meet

the demands of PG&E's customers at rates and under conditions more advantageous than those proposed by PGT.

IV. The Examiner and Commission Were Correct in Refusing to Follow the CGPA's Misleading and Incorrect Argument That PG&E "Estimated 'Cutbacks' of California Produced Gas in Order to Provide a Market" for Canadian Gas.

The petitioner group herein called CGPA is composed of the California Gas Producers Association, consisting of several medium-sized independent producers and a number of smaller producers of natural gas in California, the Independent Oil and Gas Producers of California (successor to the Oil Producers Agency of California), consisting of a number of independent producers accounting for approximately 25 percent of California's oil production, and Jade Oil and Gas Company, an independent producer with some production in northern California. Although CGPA does not oppose the certificates requested here, it seeks to have the initial delivery date of November 1, 1966 delayed one year. Its purpose in seeking such a delay is to improve the already enviable market position gas producers now have for their northern California gas production. PG&E is presently paying 30 cents per Mcf (on a 1000 Btu basis) for all gas purchased from California producers.

The Commission followed the Examiner's Initial Decision in which he carefully considered the evidence and the arguments of CGPA concerning the PG&E market requirement and its California gas supply (Initial Decision, pp. 18-22, R. 4919-4923). The Examiner found:

> (a) "There is no question PG&E will require large volumes of gas in the immediate future to supply its rapidly expanding market demand." (R. 4919)
>
> (b) "Thus, if the importation of the first increment of 100,000 Mcf of Canadian gas were deferred for two

years and California produced gas could be substituted, it was estimated the California customers of PG&E would be required to pay additional costs of some $8,030,000." (R. 4921)

(c) "From all of the testimony it is clear that PG&E will not only require all of the usable . . . California gas available but also the volumes here sought to be imported to meet its reasonably anticipated future supply requirements." (R. 4922-4923)

The evidence fully supports the Examiner's conclusions.

The gas supply available to PG&E, exclusive of the authorized additional supply of 200 M^2cf per day, will be inadequate to meet the design peak day demands of PG&E firm customers beginning in 1968 and thereafter as follows:[15]

Year	Deficiency
1968	26 M^2cf
1969	229
1970	486

Furthermore, the authorized additional supply of 200 M^2cf per day by November 1, 1967, will merely postpone the design peak day deficiency by one year until 1969. By 1970, even with the additional supply, the design peak day deficiency will be 286 M^2cf per day (Ex. 18, p. 10, R. 2403). Even with the additional supply, PG&E will still be unable to meet the average daily demands for gas on its system in the following volumes (Ex. 18, p. 7, R. 2400):

Year	Curtailment
1967	225 M^2cf
1968	345
1969	441
1970	634

15. From Ex. 18, p. 10 (R. 2403), by subtracting from the last righthand column the additional supply of 200 M^2cf per day.

Practically all of the California dry gas reserves within the area in which PG&E purchases California gas are under contract to PG&E, the subject of discussions for contract, or are committed to others, principally oil and chemical companies (R. 1614). Very minor quantities of gas are available from scattered wells which have not been connected for various reasons, such as the volume being insufficient to justify the construction of a gas line to the wells or because of low pressure or heating value (R. 1614). In short, there is no appreciable quantity of uncommitted California dry gas reserves available to PG&E (R. 1614-1615). In the opinion of Mr. J. S. Moulton, who was for approximately 20 years the PG&E officer responsible for forecasting requirements for natural gas and for the purchase of gas necessary to meet these requirements (R. 1610), the history of dry gas discoveries in California provides no pattern that PG&E can safely rely upon in planning acquisition of additional gas supplies to meet its prospective firm requirements (R. 1650). For this reason, if California gas reserves, in addition to those already committed, are not known to exist at the time PG&E must reach the decision as to the purchase of additional gas, and out-of-state reserves are known to be available, PG&E, in fulfilling both its legal and its moral obligations to its customers, must contract for the known reserves and take all other necessary steps to make them available by the time they will be required (R. 1615).[16]

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16. CGPA argues that PG&E should depend on the future discoveries of California gas and alleges that "in order to secure a permit to remove the necessary quantities of gas from the Province of Alberta for importation into northern California, PG&E presented precisely the type of evidence—indicating the probability of future gas discoveries in Alberta—which as to major

Mr. Moulton estimated that if the initial delivery dates for the additional 200 M^2cf per day were postponed for one year as argued by CGPA, and PG&E had to purchase the additional gas from producers in California, it would cost PG&E and presumably its customers an additional $8,030,000 (R. 1622).

Furthermore, even if the California reserves shown on page 28 of the CGPA Brief to the Commission on Exceptions (R. 5057) could be produced at the 1965 rate of production and if PG&E were to purchase at that 1965 rate, the life index of these existing California reserves would drop to slightly less than seven years by the end of 1970, as shown on the following table:

Year	Net Gas Produced	Reserve Dec. 31	Index Years End of Year
1965	222,000 M^2cf	2,653,700 M^2cf	11.9
1966	222,000	2,431,700	10.9
1967	222,000	2,209,700	9.9
1968	222,000	1,987,700	8.9
1969	222,000	1,765,700	7.9
1970	222,000	1,543,700	6.9

However, the plain fact of the matter is that the existing California gas reserves cannot maintain the 1965 delivery rate. As shown on Mr. S. A. Haavik's Exhibit 17 p. 9 (R. 2392), the annual deliverability of the existing California reserves will drop from 220,000 M^2cf in 1965 to 157,600 M^2cf in 1968 and thereafter to 112,200 M^2cf in 1970. It seems quite clear that the 1965 rate of production of California dry gas

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supplies of northern California dry gas it refused to present here." (CGPA Initial Brief, p. 13)

The Oil and Gas Conservation Board of Alberta, Canada, in reserving a 30 year supply for Alberta requirements makes the reasonable assumption that over that 30 year period there will be additional reserves discovered equal to two years of average discoveries, and those seeking to export gas from Alberta present evidence on discoveries directed to that issue (Ex. No. 22, Appendix D, R 2744-2748).

could be maintained only by the discovery and development of as yet unknown reserves. This cannot be relied upon. The history of discoveries in California has been sporadic. For example, only 16,200 M^2cf of reserves were added in 1956, and only 14,800 M^2cf in 1959. Nevertheless, the evidence shows that, if reserves adequate to support the 1965 rate of production should be discovered and offered for sale by the producers, PG&E could market the production as it will have a demand for gas far in excess of that which can be met by the additional 200 M^2cf per day applied for in this proceeding.

V. The Commission Did Not Abuse Its Discretion in Refusing to Adopt, in This Case, a Policy of Restricting the Importation of Natural Gas from Canada as Argued for by IPAA.

Texas and the Independent Petroleum Association of America (IPAA) argue that the Commission erred in failing to consider the effect of the proposed importation of gas on domestic producers. This argument is entirely unfounded. The Commission, in its opinion, specifically stated that it "will consider carefully in every case the effect of importations of natural gas upon the domestic industry and upon the exploration and development which may be needed to develop future gas supplies." (R. 5260) The Commission further stated:

> In the circumstances of the present case, where the need of the market for additional gas is established, where the basic facilities to procure the Canadian gas have already been constructed, where no competing application for transportation and sale from an alternative domestic source has been filed by any pipeline, and where there will be a reduction in unit cost of service which will benefit the consumers of four states, we think the benefits to be derived from granting these

applications far exceed any alleged detriments to the domestic petroleum industry or its exploration and development program. (R. 5260)

The Commission's jurisdiction over the importation of natural gas is derived from section 3 of the Natural Gas Act (15 U.S.C. § 717b), which provides: "The Commission shall issue" such import authorizations "unless . . . it finds the proposed importation will not be consistent with the public interest."[17]

It was IPAA's position in the proceedings below that the Commission should follow the policy established by the Mandatory Oil Import Program and restrict the importation of natural gas. That program does not apply to the importation of natural gas and, as the Commission found, ". . . in the circumstances of this case, the factors, even if otherwise applicable, which gave rise to the Program, do not operate to prevent the authorizations sought by PGT." (R. 5260)

The Mandatory Oil Import Program establishes the policy of the Executive branch of the government in respect to the restrictions on the importation of petroleum. It was instituted by Presidential Proclamation in 1959, after about 12 years of study, so that imports of crude oil, unfinished oils, and finished products "would not impair the national security." However, President Eisenhower, by Proclamation No. 3290, dated April 30, 1959, announced that restricting the importation of oils transported from the country where they are produced into the United States by overland

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17. IPAA misconstrues the clear meaning of Section 3 in the opening paragraph of its argument (IPAA brief, p. 3) where it states that Section 3 of the Natural Gas Act "authorizes the Federal Power Commission to permit the importation of natural gas only when such importation will be 'consistent with the public interest.'"

transportation was not necessary in order to prevent imports from "threatening to impair the national security."

By exempting imports from Canada, the development of Canadian resources was encouraged, thereby providing an additional source of oil available to the United States in case of a national or international emergency. Surely, in view of the long-standing friendly relations, the many economic ties, and the military solidarity between the two nations, no one can seriously contend that the sources of Canadian oil might be cut off from the United States during a period of emergency.

IPAA, although there is no such Presidential Proclamation with respect to natural gas, is here arguing that the Commission committed an error of law by refusing in this case to adopt a far reaching policy establishing quota restrictions on the importation of natural gas from Canada. IPAA so argues even though the Presidential Proclamation establishing mandatory imports on oil excludes oil produced in Canada. It is apparent, therefore, that the IPAA is not here seeking the establishment of a gas import control program comparable to the Mandatory Oil Import Program, but is asking instead that the Commission be required by this Court to inaugurate restrictions on the importation of natural gas far more severe than those applicable to oil.

The Commission did not abuse its discretion in refusing to adopt such a policy in the circumstances of this case.

CONCLUSION

For the foregoing reasons, we urge this Court to affirm the Commission's decision.

Respectfully submitted,

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January 30, 1967

CERTIFICATE OF COUNSEL

I certify that, in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

Malcolm H. Furbush